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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
1998 Biennial Regulatory Review -- Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996.	)	MM Docket No. 98-35

COMMENTS OF GANNETT CO., INC.

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SUMMARY

In 1975, the Commission adopted the newspaper/broadcast cross-ownership rule based on the speculative premise that common ownership of a daily newspaper and broadcast station in the same local market would necessarily impair diversity. Thus, in promulgating the rule, the FCC was primarily motivated by a "mere hoped for gain in diversity" -- not by specific factual evidence of anticompetitive conduct or unsatisfactory service by existing newspaper/ broadcast combinations. On the contrary, the agency expressly acknowledged the "separate operation" and superior locally-oriented service that had been provided by commonly-owned daily newspapers and broadcast stations.

In the two decades that have passed since the newspaper/broadcast cross-ownership rule was adopted, the Commission's speculative diversity rationale has faced increasing criticism from a variety of sources -- including officials of the agency itself -- for being "bathed in difficult subjective judgments and debated in amorphous terms." Most recently, in Lutheran Church-Missouri Synod, the D.C. Circuit took the Commission to task for attempting to define its diversity objective in a way that is "too abstract to be meaningful."

The explosion of competition in the information marketplace over the past two decades and the "real world" experiences of Gannett Co., Inc. attest to the validity of such criticisms and disprove the FCC's assumption that diversity of ownership necessarily correlates with diversity of viewpoint or program content. Cross-ownership actually fosters more and better local news and public affairs programming -- without jeopardizing the editorial autonomy of, and vigorous competition between, the entities involved. Indeed, newspaper publishing and broadcasting are fundamentally different businesses. While a cross-owner may benefit from some efficiencies and the greater resources available, Gannett's experience indicates that any

real integration or merger of newspaper and station operations is highly unlikely. Moreover, while individual owners tend to compete for the same, most profitable segment of the market, cross-owners have the economic incentive to diversify the news and informational offerings of their media entities in order to attract the largest collective audience. These observations clearly indicate that the newspaper/broadcast cross-ownership rule was poorly conceived to achieve its diversity objective.

In addition, the enormous growth in the media marketplace since the mid-1970s has made the newspaper/broadcast cross-ownership rule unnecessary. Substantial technological advances and market forces have rendered the marketplace for news and information vastly more diverse and dramatically more competitive than it was in 1975. Accordingly, the prospect of any single newspaper/broadcast combination gaining some form of local information monopoly or having any appreciable effect on diversity or economic competition in a local market today is wholly illusory.

Furthermore, as currently enforced, the newspaper/broadcast cross-ownership rule leads to unduly restrictive and wholly arbitrary results. For example, the rule fails to distinguish between center-city daily newspapers and smaller newspapers published in suburban areas or neighboring cities that lie on the fringes of a major market broadcast station's service area. Publishers of suburban or distant newspapers are flatly prohibited from acquiring the major market broadcast station -- despite the modest potential influence that their newspapers could have on the total service area of the major market station. Application of the rule in this manner is clearly illogical and counterproductive to the public interest.

The newspaper/broadcast cross-ownership rule further disserves the public interest by precluding newspaper publishers and broadcasters from taking advantage of operational synergies, while all of their unregulated and deregulated competitors are free to pursue advantageous cross-media relationships. During the past decade, the FCC has eliminated or substantially relaxed most of its cross-ownership restrictions -- rendering daily newspaper publishers and broadcast station licensees virtually alone among major media providers facing an insurmountable obstacle to common ownership. By arbitrarily limiting the pool of potential broadcast station owners in this manner, the newspaper/broadcast cross-ownership rule prevents newspaper publishers and broadcasters from utilizing their combined resources to expand and diversify the range of print and broadcast offerings and to create new and additional services.

The recent emergence of numerous newspaper/cable and broadcast/cable joint ventures demonstrates that these new outlets can enlarge consumer choice by increasing the quantity and diversity of news and information services, expand the amount of information that is communicated to the public, and improve the quality of overall media programming. Cooperative undertakings by commonly-owned newspapers and broadcast stations can yield similar and even greater public interest benefits, while avoiding the problems that inevitably result from the conflicting goals and incentives of joint venture participants. Enforcement of the newspaper/broadcast cross-ownership rule in its current form, however, erects a counterproductive barrier to the most efficient development of new cross-media information outlets, thereby depriving the public of expanded and more diverse content offerings.

Accordingly, the FCC should eliminate the cross-ownership ban and free publishers and broadcasters to compete more effectively in today's multi-channel, multi-outlet world. In the event, however, that the Commission is unwilling to repeal the newspaper/broadcast prohibition altogether, it should, at a minimum, substantially relax the rule by adopting a liberal waiver policy employing a "number of voices" test. Such a policy not only would account for the fundamental marketplace changes that have occurred over the past two decades, but also would be consistent with the FCC's waiver approach in the one-to-a-market context.

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COMMENTS OF GANNETT CO., INC.

I. INTRODUCTION

Gannett Co., Inc. ("Gannett") files the present Comments in response to the Notice of Inquiry ("NOI") released by the Federal Communications Commission (the "Commission" or the "FCC") in its biennial review proceeding. The NOI is the first step in the Commission's biennial review of its broadcast ownership rules, as required by Section 202(h) of the Telecommunications Act of 1996, which directs the FCC to "repeal or modify any regulation it determines to be no longer in the public interest."[1] Gannett submits that the daily newspaper/broadcast cross-ownership rule, which restricts its ability to provide competitive and diverse broadcast voices in many locales, should be repealed or, at a minimum, modified substantially in light of today's highly diverse and competitive media marketplace. In this regard, Gannett endorses the Comments being filed concurrently in this proceeding by the

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[1] 1998 Biennial Regulatory Review -- Review of the Commission's Broadcast Ownership Rules, MM Docket No. 98-35, FCC 98-37 at 1 (rel. March 13, 1998) ("Notice of Inquiry").

Newspaper Association of America (the "NAA") and the National Association of Broadcasters (the "NAB").

A. About Gannett, Co., Inc.

Gannett is the controlling owner of 21 broadcast television stations covering 16.6% of U.S. television households. The company is also the nation's largest owner of daily newspapers,[2] including USA Today, and the publisher of USA Weekend, a newspaper magazine. Gannett publishes daily newspapers in 38 states, including suburban and neighboring city newspapers in many areas close to major cities (such as the New York City, San Francisco, Los Angeles, Philadelphia and Seattle markets).

Gannett is strongly committed to attaining local news leadership in both print and television. For example, virtually all of the company's broadcast stations air four to six hours of locally-originated news each weekday. Gannett has invested heavily in upgrading news operations at its television stations, with the consequence that, in 16 markets, its stations typically rank first or second in major rating periods.

For many years, Gannett has maintained a firm corporate policy of assuring the editorial and journalistic autonomy of its newspapers and television stations.[3] For example, in

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[2] As of July 1998, Gannett owns 84 daily newspapers.

[3] In its 1975 decision adopting the cross-ownership ban, the Commission cited the fact that co-owned "print and [broadcast] outlets were [not] mirror images of one another, speaking with one voice," as an important factor saving numerous existing combinations from divestiture. Amendment of Sections 73.34, 73.240 and 73.636 of the Commission's Rules Relating to Multiple Ownership of Standard FM, and Television Broadcast Stations, 50 FCC 2d 1046, 1089 (1975) (Second Report and Order) ("1975 Multiple Ownership Report"), recon., 53 FCC 2d 589 (1975), rev'd in part sub nom., National Citizens Comm. for Broad. v. FCC, 555 F.2d 938 (D.C. Cir. 1977), reinstated, 436 U.S. 775 (1978).

state and national elections, Gannett newspapers within a particular state or region and within the newspaper division as a whole frequently take differing or opposing editorial positions on matters of public policy, candidate qualifications and the like. In the 1996 presidential election, for example, 40 Gannett newspapers adopted editorial positions in support of the Democratic presidential candidate, while 21 newspapers supported the Republican candidate.[4] Gannett believes that fostering such autonomy is vital to its business success and to the responsiveness of its publications and television stations to local needs and interests.

Similarly, USA Today, Gannett's flagship national newspaper, has since its founding in 1982 maintained a strict policy of including on the editorial page the expression of views and positions which disagree with the ones advocated by its editors. Such a policy is essential in Gannett's view, as it assures a full and balanced discussion of national issues.

The editorial freedom embraced by Gannett is also illustrated by the practices of its television stations in maintaining autonomy from the print side of the company. For example, although the Gannett News Service, a national news service supported and utilized by the Gannett newspaper division, is fully available to the television group, the television news departments have elected not use it. When reporting on events in Washington, DC, Gannett's television "stations prefer[] to use Gannett's TV station in Washington (WUSA-TV) as a national source, or to send their own news crews to Washington for major events."[5]

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[4] Newspaper Endorsements Don't Come Easily, News Watch, Nov. 24, 1996, at 3.

[5] Statement of Richard A. Mallary, Senior Vice President, Gannett Television, at 3 (attached hereto as Appendix A) ("Mallary Statement"). The Mallary Statement provides background on the policies which govern news broadcasts by Gannett television stations and the reasons why the stations prefer to exercise full local autonomy.

Moreover, the creation, support and growth of USA Today effectively illustrates how the extensive resources of a major media company can be combined to produce a valuable new product that serves the public's ever-increasing demand for news and information. Many millions of dollars were invested in the USA Today start-up, drawing on resources and skills available only to a company with Gannett's broad pool of newspaper management and journalistic expertise. Those resources and skills were invaluable in making USA Today the success that it is.

Gannett submits that, given the opportunity, its capabilities (as well as that of other daily newspaper publishers) can be utilized similarly in the traditional broadcast realm to serve the public interest -- without in any way jeopardizing the editorial autonomy of, and vigorous competition between, the newspaper and broadcast entities involved. As discussed below, Gannett also believes that the resources and expertise of daily newspapers should -- and do -- play an integral role in the development of, and support for, new media and innovative services.[6] Accordingly, Gannett maintains that daily newspaper publishers should not be restricted from acquiring and operating co-located broadcast stations in the diverse and highly competitive information marketplace that characterizes the late 1990s.

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[6] See generally infra Sec. III.C.2.b. (discussing the public interest benefits that can result when newspaper/cable combinations take advantage of their operational synergies in order to offer new and additional media outlets and services).

B. The Newspaper/Broadcast Cross-Ownership Rule Places a Substantial Restriction on Gannett's Ability to Provide Competitive and Diverse Broadcast Voices In Many Markets.

At various times prior to late 1997, Gannett owned radio stations in several major markets, including Chicago, Los Angeles, San Diego, Houston, Dallas and Tampa. The company divested these radio stations in 1996-97 largely because, in an era of rapidly consolidating radio station ownership, it could not expand its holdings in the numerous major markets where Gannett-operated daily newspapers -- large or small, suburban or otherwise -- would create regulatory conflicts arising from the geographical reach of the newspaper/broadcast cross-ownership rule. Gannett thus submits that the existence and inflexible enforcement of the newspaper/broadcast cross-ownership ban disserves the public interest by effectively (and arbitrarily) limiting the pool of potential owners and excluding qualified operators, such as Gannett, who possess the interest, experience and resources to provide vigorous competition in the broadcasting arena and to offer effective new and alternative services.

In many major markets, moreover, the rigid bar to Gannett's ownership of broadcast stations arises solely because of its ownership of a distant or suburban newspaper whose potential influence on the entire broadcast station service area is extremely modest. Yet the newspaper/broadcast cross-ownership rule as currently enforced recognizes no policy distinctions whatsoever between a major center-city newspaper that boasts a huge circulation and a newspaper in a small suburb or neighboring city whose circulation is confined to a narrower area far removed from the broadcast station's city of license. The lack of distinctions in the coverage of the rule thus leads to unnecessarily draconian and wholly arbitrary results.

Gannett's newspapers in the Westchester County suburbs of New York City illustrate this unduly restrictive -- and presumably unintended -- consequence of the newspaper/ broadcast cross-ownership rule. The daily circulation of these ten papers (182,518)[7] is a mere 1.5% of the total television households in the New York City market (approximately 10 million).[8] However, because the Grade A contours of many television stations in the New York City market encompass most of Westchester, the newspaper/broadcast cross-ownership rule effectively prohibits Gannett from acquiring one of the television stations in this market. Additionally, even in cases where a persuasive public interest basis for obtaining a waiver of the rule might be applicable, Gannett's opportunity to purchase a broadcast station will be barred in most cases by the typical seller's reluctance to deal with a party whose ability to secure FCC consent would be delayed and cast in substantial doubt by the necessity to seek a waiver.

Not only does application of the outdated cross-ownership restriction lead to such stultifying results, it also seems particularly unnecessary and ill-advised in the case of a company like Gannett, which, as a matter of established corporate policy, leaves all editorial and journalistic decisionmaking to the discretion of its local newspapers and television

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[7] 1997 Annual Report, Gannett Co., Inc., at 69.

[8] Warren Publishing, 1998 Television & Cable Factbook at A-782 ("1998 Television & Cable Factbook").

stations.[9] Thus, the evident premise motivating the adoption of the newspaper/broadcast cross-ownership rule -- that local newspaper/broadcast cross-ownership could impair diversity by producing some undesired degree of common viewpoint[10] -- is utterly inapplicable to operators such as Gannett.[11] Moreover, given the intensity of local, regional and national competition, the great number of competing types of media, and the extensive variety of information options available to readers/viewers, the prospect of any single owner gaining some form of local information monopoly in today's highly competitive media marketplace is wholly illusory.

II. NEWSPAPER/BROADCAST COMBINATIONS DO NOT THREATEN THE HIGHLY COMPETITIVE MEDIA MARKETPLACE.

A. The Newspaper/Broadcast Cross-Ownership Rule Was Not Originally Adopted to Safeguard Competition in Product or Advertising Markets and Is Not Needed for that Purpose.

There is no question that the Commission's principal objective in promulgating the newspaper/broadcast cross-ownership rule was to assure that a diverse number of voices and

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[9] See Mallary Statement at 4 ("[D]ictating news positions from some central office is virtually unknown in the modern era of journalism."); id. ("Gannett's television stations do not editorialize."); id. at n.1 ("[L]ess than 10% of top 50 [television] market affiliates . . . editorializ[e], and the number is declining.").

[10] See infra Sec. II.A. (noting that diversity was the Commission's primary concern in adopting the newspaper/broadcast cross-ownership rule).

[11] Furthermore, with respect to all newspaper and broadcast operators, the wide variations in basic methods of news presentation, the traditional rivalries between print and broadcast media, the need to compete for local advertising, and the imbedded cultural differences between print and broadcast media will prevent this undesired degree of common viewpoint from forming. Mallary Statement at 2-5.

viewpoints would be available in all markets -- and not to safeguard economic competition in specific product or advertising markets. Indeed, when it adopted the rule, the FCC explicitly stated that it had "analyzed the basic media ownership questions in terms of th[e] agency's primary concern -- diversity in ownership . . . rather than in terms of a strictly anti-trust approach."[12] The agency explained that, while protecting economic competition in media markets may be relevant, it "is of secondary concern under the Commission's regulatory responsibilities" and objectives.[13]

In fact, the newspaper/broadcast cross-ownership rule was but one in a series of cross-ownership restrictions that the FCC enacted in the 1960s and 1970s in furtherance of its diversity objective. The Commission also promulgated the "one-to-a-market" rule (prohibiting common ownership of radio and television stations in the same market) and rules prohibiting television stations, television networks and telephone companies from owning cable systems in their home markets.[14] In its 1975 Order, the FCC noted that "[t]he thrust of [these] . . . rule changes in the area of multiple ownership as well as the underlying principles go in the direction of increased diversity."[15]

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[12] 1975 Multiple Ownership Report, 50 FCC 2d at 1079 (emphasis added).

[13] Id. at 1080 (emphasis added). The Commission acknowledged that it is the Department of Justice ("DOJ"), not the FCC, whose charge it is to be "primarily interested in preserving competition in advertising." Id. at 1079. See also NAA Comments at Secs. VIII.A., VIII.D. (urging the FCC to leave enforcement of the antitrust laws to the DOJ and the Federal Trade Commission).

[14] See generally 1975 Multiple Ownership Report, 50 FCC 2d at 1047-49.

[15] Id. at 1075.

Throughout its 1975 decision, the Commission repeatedly emphasized that diversity was the primary rationale underlying the adoption of the newspaper/broadcast cross-ownership ban. For example, the agency argued that "the licensing of a newspaper applicant for a new station in the same city as that in which the paper is published is not going to add to already existing choices, is not going to enhance diversity."[16] Moreover, in discussing the divestiture policy corresponding to the cross-ownership ban, the FCC stated that its "primary concern" was "diversity in ownership as a means of enhancing diversity in programming service to the public."[17]

In short, the Commission's adoption of the newspaper/broadcast cross-ownership rule clearly was motivated by its "hoped for gain in diversity"[18] -- not by any specific concern about reducing anticompetitive behavior by existing cross-owners. In fact, the agency expressly acknowledged that it had found no evidence of specific anticompetitive conduct by newspaper-owned stations and was unable to show that such common ownership had an adverse impact on advertising prices.[19] Moreover, the FCC determined that, in general, there was significant diversity or "separate operation" between commonly-owned stations and newspapers.[20]

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[16] Id.

[17] Id. at 1079.

[18] Id. at 1078.

[19] Id. at 1072. Even the Supreme Court recognized that the Commission never found that "existing co-located newspaper-broadcast combinations . . . are harmful to competition." National Citizens Comm. for Broad., 436 U.S. at 786.

[20] 1975 Multiple Ownership Report, 50 FCC 2d at 1089.

In addition, the Commission found that existing grandfathered combinations tended to be superior licensees in terms of locally oriented service.[21] Based upon an examination of programming reports filed by licensees, the FCC determined that, on average, co-located newspaper-owned stations programmed six percent more local news, nine percent more non-entertainment programming and twelve percent more local programming than other television stations.[22] The Commission described these findings as showing a "statistically significant superiority in newspaper owned television stations in a number of program particulars."[23]

Thus, the Commission justified the adoption of the newspaper/broadcast cross-ownership rule based upon a "mere hoped for gain in diversity" in the media marketplace[24] -- not on any real concern about safeguarding competition in the product and advertising markets. As discussed below, not only was the rule poorly conceived as a means of increasing diversity, but also it is wholly unnecessary in today's highly diverse and competitive media environment. Moreover, the existence of the rule unfairly prevents newspaper publishers and broadcasters from utilizing their resources and expertise to provide more and better information services to the public.

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[21] Id. at 1078-81.

[22] Id. at 1094-98 app. C.

[23] Id. at 1078 n.26.

[24] Id.

B. A Restriction on the Right of Newspaper Publishers to Own Broadcast Stations Is Unnecessary In Today's Highly Competitive Media Marketplace.

As demonstrated in detail in the NAA's Petition for Rulemaking,[25] as well as in the Comments of the NAA and the NAB filed concurrently herewith, the marketplace for news, information and entertainment has become vastly more diverse and dramatically more competitive in the more than two decades since the newspaper/broadcast cross-ownership rule was first adopted. Daily newspapers today face intense product competition not only from weekly newspapers and national newspapers such as USA Today, but also from direct mail, yellow pages, outdoor advertising, the Internet and other non-print media. Indeed, direct mail advertising has grown at such an exponential rate that it now closely rivals total daily newspaper advertising.[26] Yellow pages and outdoor advertising also have substantially eroded newspapers' share of advertising.[27] In addition, the Internet, which is increasingly being utilized for advertiser-supported services, holds virtually unlimited promise both as a source of

[25] NAA Petition for Rulemaking, RM-_ (filed Apr. 28, 1997) (docket no. not yet assigned) ("NAA Petition").

[26] Even two years ago, direct mail advertising revenues were $34.8 billion. Direct Marketing Association, Economic Impact: U.S. Direct Marketing Today -- 1997 Forecast at 33 (1997).

[27] Outdoor advertising accounted for almost $600 million in advertising revenues in 1996. Robert J. Coen, Coen: Ad Spending Tops $175 Billion During Robust '96, Advertising Age, May 12, 1997, at 20. Additionally, yellow pages advertising generated $9.3 billion in 1997. Id. See also NAA Comments at Sec. VIII.D. (discussing competitors for advertising dollars, including yellow pages, outdoor advertising and other "miscellaneous" advertising vehicles).

information and as a vehicle for advertising.[28] The explosive growth of non-print media, such as traditional broadcasting, cable, DBS, SMATV, wireless cable and videocassettes, has further eroded newspapers' share of advertising revenues.

In addition, as technology has allowed for reduced publishing costs, locally-published media have proliferated. Weekly newspapers, "alternative newsweeklies," special interest newspapers, magazines and the Internet now present substantial and growing competition for daily newspapers.[29] Moreover, widespread use of worldwide computer networking via the Internet, which was non-existent just five years ago, has emerged as an ideal medium for the average consumer to communicate on a local, national and even worldwide basis. Today, approximately 62 million Americans use the Internet, which is slightly more than the number that subscribe to daily newspapers.[30]

Television and radio broadcast stations in today's media marketplace similarly face intense and constantly increasing competition from a wide range of media. Indeed, growth in

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[28] Demonstrating the growing power of the Internet, Dow Jones & Company reported that, for the six-month period ending September 30, 1997, the Wall Street Journal lost an average of 8,652 sales daily, while The Wall Street Journal Interactive Edition, the company's Internet news service, increased its number of paid online subscribers to almost 150,000. Mark Fitzgerald, Editor & Publisher Interactive News Page, Latest Newspaper Circulation Figures: 12 of Top 25 Lose Sunday Readers, Nov. 6, 1997 (visited July 20, 1998) <http://www.mediainfo.com/poneweb-egi/Fastweb?searchForm+library>.

[29] See NAA Comments at Sec. VI.A.1. (discussing the increased circulation and readership of weekly, "alternative newsweekly," and other specialty newspapers). In 1975, the Commission apparently concluded that weekly and other specialty newspapers played a minimal role in providing consumers with local news and information, noting in its rulemaking that "[n]ot all print media are equal or generally circulated." 1975 Multiple Ownership Report, 50 FCC 2d at 1075.

[30] Thomas E. Weber, The Big Question: Who Is On The Net?, The San Diego Union-Tribune, May 5, 1998, at 6.

the number and variety of broadcast outlets alone is sufficient to allay the diversity concerns that led the Commission to adopt the cross-ownership ban more than two decades ago.[31] This growth in traditional broadcast media, moreover, has been accompanied by the development of a host of alternative information providers and, hence, new competitors that were non-existent in 1975 -- ranging from the increasingly dominant cable industry to DBS, DARS, on-line video and audio services, and numerous other services and delivery mechanisms.

Since 1975, the total number of licensed television broadcast stations has increased by more than 50 percent, from 1,010 to 1,579.[32] Even six years ago, 95 percent of all television households were located in markets with at least five television stations, and the majority of television households were located in markets with at least ten stations.[33] In addition to this increase in the sheer number of television stations, television content has become significantly

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[31] See NAA Comments at Sec. VI. ("[O]ver the past two decades, the traditional forms of mass media outlets -- newspaper publishing and radio and television broadcasting -- have grown at a phenomenal rate, both in terms of the sheer number of voices available and in the accessibility of a rich variety of programming formats."); see also Mark R. Fratrik, Media Outlets by Market -- Update, NAB Comments app. (July 21, 1998) (filed concurrently in the instant proceeding).

[32] Broadcast Station Totals as of May 31, 1998, FCC Mimeo No. 83989 (June 19, 1998) ("Broadcast Station Totals"). Moreover, with the advent of digital television just around the corner, the number of broadcast programming outlets is likely to undergo a further dramatic increase as broadcasters will have the option of transmitting one or two high definition television channels, multiple streams of standard definition television, or some combination thereof. Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, 12 FCC Rcd 12809 (1997) (Fifth Report and Order); Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, 12 FCC Rcd 14588 (1997) (Sixth Report and Order).

[33] Florence Setzer and Jonathan Levy, Broadcast Television in a Multichannel Marketplace, OPP Working Paper Series No. 26, 6 FCC Rcd 3996, 4013-14 (1991) ("OPP Working Paper No. 26").

more diverse -- rendering advertising competition more intense -- as content is no longer dominated by the "big three" networks (i.e., ABC, CBS, NBC) as it was in 1975. The success of the Fox Television Network, together with the enormous growth in the popularity of cable programming and the recent introduction of two more national broadcast television networks, UPN and WB, have further expanded the diversity of broadcast television content.[34] This growth in content diversity has sparked competition among broadcast networks and their local affiliates, as reflected in the 18 percent decrease in the combined viewership of ABC, CBS, Fox and NBC in recent years -- from a 72 percent share in the 1993-94 season[35] to a 58 percent share in the 1996-97 season.[36]

This healthy growth in the broadcast television industry has been paralleled by similar growth in broadcast radio. Since the mid-1970s, the total number of licensed radio stations in the U.S. has increased by more than 50 percent -- from 8,094 in 1975 to 12,322 in 1998.[37] Of

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[34] Evidence of successful competition by non-"big three" content providers abounds. For example, in the May 1998 sweeps, among the coveted 18-49 year olds, NBC had a 6.7 rating, Fox followed with a 5.0, ABC had a 4.4, and CBS had a 3.8. Michael Stroud, Fox Beats ABC 18-49, Broadcasting & Cable, May 25, 1998, at 11. Furthermore, this season, UPN and WB are achieving a combined 9 percent share. People's Choice, Broadcasting & Cable, June 29, 1998, at 70 ("People's Choice"). Additionally, Paxson Communications Corporation is launching a family-oriented programming network next month. Paxson Communications Corp. Signs Agreement with Nielsen Media Ratings Service, Business Wire, May 7, 1998. Moreover, in early July, 1998, viewership of the basic cable line-up for the first time exceeded that of ABC, CBS, Fox and NBC combined. David Bauder, Cable Ratings Top Networks, Wash. Post, July 8, 1998, at D7.

[35] Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming, 9 FCC Rcd 7442, 7492 (1994) (First Report).

[36] People's Choice at 70.

[37] Broadcast Station Totals, FCC Mimeo No. 83989.

the 267 Arbitron metro markets in the U.S. today, almost half (46.4%) are now served by more than 20 radio stations, and nearly all (90.3%) are served by more than ten radio stations.[38]

When the Commission adopted the newspaper/broadcast cross-ownership rule in 1975, a mere 17 percent of U.S. television households subscribed to cable.[39] Today, subscribership has escalated to 66.2 percent of U.S. television households,[40] with 96.2 percent of subscribers served by cable systems with at least 30 channels and 57.2 percent of subscribers served by cable systems with at least 54 channels.[41] This multitude of channels offers consumers a wide range of programming, including local and regional news, education and public affairs, from hundreds of cable networks.[42] The advent of fiber optics, digital compression and a wealth of other technological advances promise to enable cable systems to offer even more channels, rendering it an even stronger competitor in the near future.

Finally, a host of alternative media, which, in some cases, were not even in existence when the Commission adopted the newspaper/broadcast cross-ownership rule, now provide effective competition for broadcasting. For example, DBS systems now offer 6.6 million

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[38] BIA Research Inc., Radio Market Report 1998 at Table 4.

[39] OPP Working Paper No. 26 at 4008-09.

[40] Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming, 13 FCC Rcd 1034, 1049 (1998) (Fourth Annual Report) ("1997 Competition Report"); see also NAA Comments at Sec. VI.C.2. (discussing increase in cable subscribership).

[41] 1998 Television & Cable Factbook at I-97.

[42] See NAA Comments at Sec. VI.C.2. (discussing the steady increase in, and variety of, cable programming services).

subscriber households over 200 channels of high-quality digital video, and industry analysts forecast that DBS will serve as many as 12-15 million households by the year 2000.[43] The Internet has also rapidly emerged as a legitimate competitor to broadcasting. Hundreds of U.S. and foreign radio stations are now rebroadcasting over the Internet,[44] thousands of hours of video programming are already available on the Internet,[45] and production of Internet-only video programming is well underway.[46]

In short, today's daily newspapers and broadcast stations face extensive and increasing competition both from their traditional media rivals as well as from a wide array of alternative media. Such competition provides more than ample protection against market dominance by a daily newspaper/broadcast station combination in the local media marketplace -- rendering the newspaper/broadcast cross-ownership rule unnecessary. In the event, however, that the Commission is still unconvinced that newspaper-owned broadcast stations are unlikely to have an appreciable effect on economic competition in the local marketplace, it should defer to those agencies with the authority and expertise to determine whether a proposed combination

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[43] 1997 Competition Report, 13 FCC Rcd at 1060.

[44] See BRS Radio Consultants Directory Analysis, (visited July 18, 1998) <http://www.radio-directory.com/analysis.html> (citing web sites listing hundreds of radio stations that "netcast" their programming).

[45] 1997 Competition Report, 13 FCC Rcd at 1095; see also Richard Tedesco, Video Streaming: The Not Ready for Prime Time Medium, Broadcasting & Cable, May 25, 1998, at 22 (estimating that 30,000 web pages, including those of 30 television stations, now transmit video over the Internet).

[46] See NAA Comments at Sec. VI.C.4. (discussing the emergence of Internet-only video programming).

would result in market concentration -- rather than impose a universal ban on such cross-ownership.

C. The Commission Should Not Apply the Newspaper/Broadcast Cross-Ownership Rule Automatically When a Daily Newspaper Serving a Suburb or Neighboring City Combines with a Broadcast Station.

The Commission's 1975 decision defined the scope of the newspaper/broadcast cross-ownership rule in broad terms of broadcast signal "encompassment" of a daily newspaper's community of publication.[47] Assuming arguendo the appropriateness of any restrictions, it appears abundantly clear in retrospect that this decision was reached without adequate attention to the vastly different degrees of influence accruing to center-city daily newspapers and those published in distant suburbs or neighboring communities lying on the fringes of the technical reach of major market television and radio stations. As a consequence, the rule produces highly varied and anomalous results.

In the case of Gannett, for example, despite the de minimis circulation and financial instability of the daily Journal newspapers published in the Maryland and Virginia suburbs, the company was forced to divest these entities solely because the particular communities of publication lay within the expansive geographic sweep of the Grade A signal of Gannett-owned WUSA-TV. This form of public policy illogically exalts ease of administration and simple regulatory form over ordinary experience and practical reality. Whereas it is well known that suburban newspapers address issues of highly localized and therefore rather narrow interest, major market television stations appeal to metropolitan area-wide needs and interests affecting

[47] 47 C.F.R. § 73.3555(d).